

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000123

12/05/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

GERALD R GRANT

v.

TAYLOR MCKAY THATCHER

RICHARD D COFFINGER

FINANCIAL SERVICES-CCC
PEORIA JUSTICE COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PEORIA JUSTICE COURT

Cit. No. #2159696

Charge: A. DUI
B. DUI EXTREME + .15%

DOB: 05/15/64

DOC: 11/18/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on November 6, 2002. This Court has considered and reviewed the record of the proceedings from the Peoria Justice Court, and the excellent Memorandum submitted by Appellant. This Court has also considered Appellant's Supplemental Memorandum filed November 6, 2002. No responses (memorandum or otherwise) have been received from Appellee. In his supplemental memorandum, Appellant urges this court to view Appellee's failure to file an appellate

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memorandum as a confession of error. However, this Court may not find a confession of error without resolving the underlying issues raised by Appellant on appeal. A full and complete record has been presented to this court, and it is this court's duty to review that record for error, not withstanding the State's failure to file a memorandum.¹

The first issue raised substantively by Appellant is similar to the issue raised in his supplemental memorandum: it concerns the failure of the State to timely file a response to his Motion to Suppress. Appellant contends that the trial court should have struck the State's untimely response to his Motion to Suppress. Citing Rule 35, Arizona Rules of Criminal Procedure, Appellant overlooks Rule 35.4 which provides:

Upon request of a party, on its own initiative, the court may waive a requirement specified in this rule, or overlook a formal defect in a motion or request.

This rule specifically permits the court to waive the formal requirements of motion practice outlined in Rule 35.1, Arizona Rules of Criminal Procedure, including the requirements that responses and replies be filed timely. The trial judge in this case properly exercised his discretion to refuse to strike an untimely pleading filed by the State. More importantly, the trial judge's ruling on Appellant's motion was made not on the basis of the pleadings alone, but after an evidentiary hearing on that motion.

The remaining issue presented by Appellant concerns the denial by the trial judge of his Motion to Suppress. This Court has reviewed the record and finds no error by the trial judge. Substantial evidence was presented to show that there was no violation of Appellant's right to counsel.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Peoria Justice Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Peoria Justice Court for all future and further proceedings in this case.

¹ State ex rel. McDougall v. Superior Court, 174 Ariz. 450, 850 P.2d 688 (App. 1993).
Docket Code 513 Form L000